

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

DAFINA ROTER VELYOV,

Plaintiff,

-vs-

Case No.: 2:14-cv-00071-RTR

**FRONTIER AIRLINES, INC. and
REPUBLIC AIRWAYS HOLDINGS INC.,**

Defendants.

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

The Court should grant Defendants' Motion for Partial Judgment on the Pleadings (entering judgment against Plaintiff on her WFEA claim) for two (2) reasons:

1. The WFEA does not create a private cause of action beyond those particular factual circumstances examined in *Yanta v. Montgomery Ward & Company*, 224 N.W.2d 389 (Wis. 1974), and circumscribed by *Bachand v. Connecticut General Life Insurance*, 305 N.W.2d 149 (Wis. Ct. App. 1981), which factual circumstances do not exist here.

2. Roter failed to file her memorandum in opposition to Defendants' Motion or Partial Judgment on the Pleadings in a timely manner. *See* Civil L. R. 7(d) ("Failure to file a memorandum in opposition to a motion is sufficient cause for the Court to grant the motion.").¹

Plaintiff's Response (Doc. 25), although passionate, does nothing more than re-state the facts found in her Complaint. The Complaint ultimately fails to articulate the requisite factual circumstances required to afford her a private right of action in this Court for her WFEA claim.

¹ Plaintiff filed her response twenty-five (25) days late (on July 21, 2014) after the court verbally, and in writing, advised her of the potential negative consequences of her failure to quickly file her Response and otherwise follow the federal and local procedural rules. (*See* Doc. 23).

Plaintiff admits as much in the first sentence of her Response. Plaintiff states, "Comparison of *Yanta v. Montgomery Ward* is NOT applicable to my case." (Response, at p. 1). In any event, as noted by Judge Randa in *Martin v. Northwestern Mut. Life Ins. Co.*, Case No. 05-C-0209, 2006 WL 897751 (E.D. Wisc. Mar. 31, 2006), a plaintiff holds a "private cause of action . . . under the WFEA only in those limited circumstances where the remedy sought by the litigant was previously unavailable through administrative proceedings." *Id.* at *3-4. Like the plaintiff's WFEA claim in the *Martin* case, Plaintiff's WFEA claim reflects no such pursuit of previously unavailable remedies. Under these admitted circumstances, Plaintiff possesses no WFEA private right of action. Consequently, Defendants respectfully request that the Court grant their Motion and award Defendants all other just and proper relief..

Respectfully submitted,

s/ Paul C. Sweeney

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and forwarded a copy of the filing via United States, first-class mail, to the following:

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s/ Paul C. Sweeney

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